

SENATE BILL No. 105

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-38-9.

Synopsis: Expungement. Provides that expungement provisions concerning an arrest that does not lead to a conviction also apply to criminal charges or juvenile allegations that do not lead to a conviction. Provides that a person who files for the expungement of an arrest, criminal charge, or juvenile allegation that did not lead to a conviction is not required to pay a filing fee. Specifies that a person who files a petition for expungement may not be required to pay a filing fee. Removes a requirement that bureau of motor vehicles records must be certified.

Effective: July 1, 2015.

Steele

January 6, 2015, read first time and referred to Committee on Judiciary.



First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 105

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-38-9-1, AS AMENDED BY P.L.181-2014,
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 1. (a) This section applies only to a person who
4 has been arrested, **charged with an offense, or alleged to be a**
5 **delinquent child**, if:
6 (1) the arrest, **charge, or juvenile allegation**:
7 (A) did not result in a conviction or juvenile adjudication; or
8 (B) resulted in a conviction or juvenile adjudication and the
9 conviction or adjudication was vacated on appeal; and
10 (2) the person is not currently participating in a pretrial diversion
11 program.
12 (b) Not earlier than one (1) year after the date of arrest, **criminal**
13 **charge, or juvenile allegation (whichever is later)**, if the person was
14 not convicted or adjudicated a delinquent child, or the date of the
15 opinion vacating the conviction or adjudication becomes final (unless
16 the prosecuting attorney agrees in writing to an earlier time), the person



may petition the court for expungement of the records related to the arrest, **charge, or juvenile allegation.**

(c) A petition for expungement of records must be verified and filed in the court in which the charges were filed, or if no criminal charges were filed, in a court with criminal jurisdiction in the county where the arrest occurred. The petition must set forth:

(1) the date of the arrest, **charges, or juvenile allegation, and conviction (if applicable);**

(2) the county in which the arrest occurred, **the county in which the information or indictment was filed, and the county in which the juvenile allegation was filed, if applicable;**

(3) the law enforcement agency employing the arresting officer, if known;

(4) the court in which the charges or juvenile allegation was filed, if applicable;

~~(4)~~ (5) any other known identifying information, such as the name of the arresting officer, case number, or court cause number;

~~(5)~~ (6) the date of the petitioner's birth; and

~~(6)~~ (7) the petitioner's Social Security number.

A person who files a petition under this section is not required to pay a filing fee.

(d) The court shall serve a copy of the petition on the prosecuting attorney.

(e) Upon receipt of a petition for expungement, the court:

- (1) may summarily deny the petition if the petition does not meet the requirements of this section, or if the statements contained in the petition indicate that the petitioner is not entitled to relief; and
- (2) shall grant the petition unless:

(A) the conditions described in subsection (a) have not been met; or

(B) criminal charges are pending against the person.

(f) Whenever the petition of a person under this section is granted:

(1) no information concerning the arrest, vacated conviction, or vacated juvenile adjudication may be placed or retained in any state central repository for criminal history information or in any other alphabetically arranged criminal history information system maintained by a local, regional, or statewide law enforcement agency;

(2) the clerk of the supreme court shall seal or redact any records in the clerk's possession that relate to the arrest, vacated conviction, or vacated juvenile adjudication;

(3) the records of:



- (A) the sentencing court;
- (B) a juvenile court;
- (C) a court of appeals; and
- (D) the supreme court;

concerning the person shall be redacted or permanently sealed; and

(4) with respect to the records of a person who is named as an appellant or an appellee in an opinion or memorandum decision by the supreme court or the court of appeals, the court shall:

(A) redact the opinion or memorandum decision as it appears on the computer gateway administered by the office of technology so that it does not include the petitioner's name (in the same manner that opinions involving juveniles are redacted); and

(B) provide a redacted copy of the opinion to any publisher or organization to whom the opinion or memorandum decision is provided after the date of the order of expungement.

The supreme court and the court of appeals are not required to redact, destroy, or otherwise dispose of any existing copy of an opinion or memorandum decision that includes the petitioner's name.

~~(g)~~ However, This chapter does not require any change or alteration in:

- (1) any internal record made by a law enforcement agency at the time of the arrest and not intended for release to the public;
- (2) the record of any court in which the criminal charges were filed; or
- (3) records that relate to a diversion or deferral program.

~~(g)~~ (h) If a person whose records are expunged brings an action that might be defended with the contents of the expunged records, the defendant is presumed to have a complete defense to the action. In order for the plaintiff to recover, the plaintiff must show that the contents of the expunged records would not exonerate the defendant. The plaintiff may be required to state under oath whether the plaintiff had records in the criminal justice system and whether those records were expunged. If the plaintiff denies the existence of the records, the defendant may prove their existence in any manner compatible with the law of evidence.

SECTION 2. IC 35-38-9-8, AS AMENDED BY P.L.181-2014, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



JULY 1, 2015]: Sec. 8. (a) This section applies only to a petition to expunge conviction records under sections 2 through 5 of this chapter. This section does not apply to a petition to expunge ~~arrest~~ records **related to the arrest, criminal charge, or juvenile allegation** under section 1 of this chapter.

(b) Any person may seek an expungement under sections 2 through 5 of this chapter by filing a verified petition for expungement. The petition must include the following:

(1) The petitioner's full name and all other legal names or aliases by which the petitioner is or has been known.

(2) The petitioner's date of birth.

(3) The petitioner's addresses from the date of the offense to the date of the petition.

(4) A ~~certified~~ copy of petitioner's records from the bureau of motor vehicles.

(5) The petitioner shall affirm that no criminal investigation or charges are pending against the petitioner.

(6) The petitioner shall affirm that the petitioner has not committed another crime within the period required for expungement.

(7) The petitioner shall list all convictions and the date of the conviction, and any appeals from the conviction and the date any appellate opinion was handed down, if applicable.

(8) The petitioner shall affirm that the required period has elapsed or attach a copy of the prosecuting attorney's written consent to a shorter period.

(9) The petitioner shall describe any other petitions that the petitioner has filed under this chapter.

(10) For a petition filed under section 5 of this chapter, the petitioner shall attach a copy of the prosecuting attorney's written consent.

(11) The petitioner shall provide evidence that the petitioner has paid all fines, fees, and court costs, and satisfied any restitution obligation imposed on the person as part of the sentence.

(c) The petitioner may include any other information that the petitioner believes may assist the court.

(d) A person who files a petition under this section is not required to pay a filing fee.

~~(d)~~ (e) The petitioner shall serve a copy of the petition upon the prosecuting attorney in accordance with the Indiana Rules of Trial Procedure.

~~(e)~~ (f) The prosecuting attorney shall inform the victim of the



1 victim's rights under IC 35-40-6 by contacting the victim at the victim's
2 last known address.

3 (f) (g) The prosecuting attorney shall reply to the petition not later
4 than thirty (30) days after receipt.

5 SECTION 3. IC 35-38-9-9, AS AMENDED BY P.L.181-2014,
6 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2015]: Sec. 9. (a) If the prosecuting attorney does not object,
8 the court may grant the petition for expungement without a hearing.

9 (b) The court may summarily deny a petition, if the petition does not
10 meet the requirements of section 8 of this chapter, or if the statements
11 contained in the petition demonstrate that the petitioner is not entitled
12 to relief.

13 (c) If the prosecuting attorney objects to the petition, the court shall
14 set the matter for hearing not sooner than sixty (60) days after service
15 of the petition on the prosecuting attorney.

16 (d) A victim of the offense for which expungement is sought may
17 submit an oral or written statement in support of or in opposition to the
18 petition at the time of the hearing. The petitioner must prove by a
19 preponderance of the evidence that the facts alleged in the verified
20 petition are true.

21 (e) The grant or denial of a petition is an appealable final order.

22 (f) If the court grants the petition for expungement, the court shall
23 issue an order of expungement as described in sections 6 and 7 of this
24 chapter.

25 (g) This subsection applies only to a petition to expunge conviction
26 records filed under sections 2 through 5 of this chapter. This subsection
27 does not apply to a petition to expunge ~~arrest~~ records **related to the**
28 **arrest, criminal charge, or juvenile allegation** under section 1 of this
29 chapter. A petitioner may seek to expunge more than one (1) conviction
30 at the same time. The petitioner shall consolidate all convictions that
31 the petitioner wishes to expunge from the same county in one (1)
32 petition. A petitioner who wishes to expunge convictions from separate
33 counties must file a petition in each county in which a conviction was
34 entered.

35 (h) This subsection applies only to a petition to expunge conviction
36 records filed under sections 2 through 5 of this chapter. This subsection
37 does not apply to a petition to expunge ~~arrest~~ records **related to the**
38 **arrest, criminal charge, or juvenile allegation** under section 1 of this
39 chapter. Except as provided in subsections (i) and (j), a petitioner may
40 file a petition for expungement only one (1) time during the petitioner's
41 lifetime. For purposes of this subsection, all petitions for expungement
42 filed in separate counties for offenses committed in those counties



count as one (1) petition if they are filed in one (1) three hundred sixty-five (365) day period.

(i) A petitioner whose petition for expungement has been denied, in whole or in part, may file a subsequent petition for expungement with respect to one (1) or more convictions included in the initial expungement petition that were not expunged. However, if the petition was denied due to the court's exercise of its discretion under section 4 or 5 of this chapter, a subsequent petition for expungement may be filed only after the elapse of three (3) years from the date on which the previous expungement petition was denied. Except as provided in subsection (j), a subsequent petition for expungement may not include any conviction that was not included in the initial expungement petition.

(j) A court may permit a petitioner to file a subsequent petition for expungement with respect to one (1) or more convictions that were not included in the initial expungement petition only if the court finds that:

(1) the petitioner intended in good faith to comply with subsections (g) and (h);

(2) the petitioner's failure to comply with subsections (g) and (h) was due to:

(A) excusable neglect; or

(B) circumstances beyond the petitioner's control; and

(3) permitting the petitioner to file a subsequent petition for expungement is in the best interests of justice.

